

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**KENDRICK STORY
ADC #109934**

PLAINTIFF

v.

No. 5:19-cv-155-DPM

**WALKER, Sergeant, Cummins Unit;
and COLE, CO, Cummins Unit**

DEFENDANTS

ORDER

The Court adopts Magistrate Judge Kearney's unopposed recommendation, *Doc. 39*. FED. R. CIV. P. 72(b) (1983 addition to advisory committee notes). "[N]ot every overflowed toilet in a prison amounts to a constitutional violation." *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996). Instead, the duration of unsanitary conditions is critical. Here, the six-hour exposure to water and sewage because of an overflow is not sufficient to amount to an Eighth Amendment violation. And though the Court credits Story's allegation that his water was turned off for three days after the overflow, he hasn't met proof with proof to show that Walker and Cole were responsible for that deprivation. Defendants' motion for summary judgment, *Doc. 31*, is therefore granted; and Story's cross-motion, *Doc. 34*, is denied. Story's complaint will be dismissed with prejudice.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

16 April 2020